

DRAFT OF PROPOSED LEGISLATION TO AMEND ACT FOR  
THE GRADING AND CLASSIFICATION OF CLERKS IN  
FOREIGN SERVICE

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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A REPORT FROM THE SECRETARY OF STATE AND THE DRAFT OF  
PROPOSED LEGISLATION TO AMEND THE ACT ENTITLED "AN  
ACT FOR THE GRADING AND CLASSIFICATION OF CLERKS IN  
THE FOREIGN SERVICE OF THE UNITED STATES OF AMERICA,  
AND PROVIDING COMPENSATION THEREFOR"

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FEBRUARY 1, 1939.—Referred to the Committee on Foreign Affairs and ordered  
to be printed

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THE WHITE HOUSE,  
February 1, 1939.

*To the Congress of the United States of America:*

I commend to the favorable consideration of the Congress the enclosed report from the Secretary of State and the accompanying draft of proposed legislation to amend the act entitled "An act for the grading and classification of clerks in the Foreign Service of the United States of America, and providing compensation therefor," approved February 23, 1931.

FRANKLIN D. ROOSEVELT.

(Enclosures: (1) Report of the Secretary of State and (2) draft of proposed bill.)

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DEPARTMENT OF STATE,  
January 26, 1939.

The PRESIDENT:

I have the honor to submit with a view to its transmission to the Congress, if you approve, a bill that comprises a number of amendments to the act approved February 23, 1931 (U. S. C., title 22, secs. 1-23 L), the purposes of which are to assure the future financial sound-

ness of the Foreign Service retirement and disability fund and to correct certain minor deficiencies and inequalities that have become apparent through experience in the administration of the Foreign Service under the act in question.

The proposed bill includes amendments of a relatively minor administrative character to sections 3 and 10 of the act of February 23, 1931. The amendment to section 3 is for the purpose of removing a discrimination which exists under the present law against a small group of American citizen employees in our diplomatic and consular offices abroad, who cannot be considered "clerks" and are not, therefore, eligible under present law to receive certain allowances authorized for "clerks." The proposed amendment to section 10 of the act of February 23, 1931, is intended to make it possible for the President to transfer ambassadors and ministers from one diplomatic post to another abroad in much the same manner Foreign Service officers are now transferred. At present there is no such legal authorization.

The amendments to section 26 of the act of February 23, 1931, for the purpose of improving and assuring the future financial soundness of the Foreign Service retirement and disability system, are based on a comprehensive legislative program, the important features of which may be summarized as follows:

1. Actuarial valuations of the amendments in the proposed bill indicate that the costs involved therein will not exceed the costs of the benefits provided by the present law.

2. An amendment is proposed to remove the existing arbitrary limitation on the Government's contributions to the retirement fund. This feature of the Foreign Service system has proved actuarially unsound; is found in no other known public or private retirement plan; and makes eventual bankruptcy of the fund inevitable. The proposed amendment will provide authority for appropriations as they become necessary to reestablish and to maintain the solvency of the Foreign Service retirement system, a statutory authority that already exists with respect to all other retirement plans maintained by this Government.

3. An amendment is proposed to provide retirement benefits for widows of deceased officers, active or retired, through the voluntary acceptance by the officer of a reduced annuity, a portion of which would continue after his death to his widow. The proposal is actuarially sound; and the cost of this amendment, which is relatively small, is offset by other amendments which will reduce costs to the Government.

The Department of State has prepared and has available for submission to the Congress and its appropriate committees, to be used in considering the enclosed bill, detailed studies and reports in regard to all proposed amendments to the present law, which include valuation reports of the Foreign Service retirement and disability system prepared by the Government Actuary, comparative analyses of the various retirement provisions applicable to officers and employees of this Government, and to the Foreign Service personnel of a number of the most important foreign governments and other data it is believed will prove of assistance for this purpose.

Respectfully submitted.

CORDELL HULL.

## (Enclosure: Draft of proposed legislation.)

A BILL To amend the act entitled "An act for the grading and classification of clerks in the Foreign Service of the United States of America, and providing compensation therefor," approved February 23, 1931

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Act entitled "An Act for the grading and classification of clerks in the Foreign Service of the United States of America, and providing compensation therefor," approved February 23, 1931, be, and the same is hereby, amended as follows:

SEC. 2. Section 3 of said Act is amended to read as follows:

"SEC. 3. That the Secretary of State is hereby authorized, at posts where in his judgment it is required by the public interests for the purpose of meeting the unusual or excessive costs of living ascertained by him to exist, to grant compensation to clerks assigned there in addition to the basic rates herein specified, and also to other employees in the Foreign Service of the United States who are American citizens in addition to the basic rates of their salaries as fixed by the Secretary of State, within such appropriations as Congress may make for such purpose: *Provided, however,* That all such additional compensation with the reasons therefor shall be reported to Congress with the annual budget."

SEC. 3. Section 10 of said Act is amended to read as follows:

"Sec. 10. (a) That the officers in the Foreign Service shall hereafter be graded and classified as follows with the salaries of each class herein affixed thereto, except as increases in salaries are authorized in section 33 of this Act, but not exceeding in number for each class a proportion of the total number of officers in the Service represented in the following percentage limitations:

"Ambassadors and ministers as now or hereafter provided: Foreign Service officers as follows: Class 1, 6 per centum, \$9,000 to \$10,000; class 2, 7 per centum, \$8,000 to \$8,900; class 3, 8 per centum, \$7,000 to \$7,900; class 4, 9 per centum, \$6,000 to \$6,900; class 5, 10 per centum, \$5,000 to \$5,900; class 6, 14 per centum, \$4,500 to \$4,900; class 7, \$4,000 to \$4,400; class 8, \$3,500 to \$3,900; unclassified, \$2,500 to \$3,400: *Provided,* That as many Foreign Service officers above class 6 as may be required for the purpose of inspection may be detailed by the Secretary of State for that purpose.

"(b) That any person appointed an ambassador or a minister by the President by and with the advice and consent of the Senate, who has taken his oath of office and entered upon his official duties as required by law, may be thereafter transferred in accordance with a subsequent appointment as ambassador or minister by the President by and with the advice and consent of the Senate; and notwithstanding the provisions of section 1740 of the Revised Statutes, as amended (U. S. C., title 22, sec. 121), he shall be entitled to be paid salary at the rate prescribed by law for the ambassador or minister at the post from which he is transferred to the date he takes oath of office under his new appointment, and thereafter at the rate prescribed by law for the ambassador or minister at the new post, including in either case such period as he may be necessarily in transit, traveling under orders, receiving instruction, or on authorized leave of absence as provided by law for officers and employees of the Foreign Service of the United States. The taking of his oath by an ambassador or minister appointed to a post, shall not operate to deprive the retiring ambassador or minister at such post, of salary up to the date of his departure therefrom, while traveling under orders, during transit to his home in the United States and while on authorized leave of absence as provided by the law for officers and employees of the Foreign Service of the United States. Appropriations are hereby authorized to pay salaries in such cases."

SEC. 4. Section 26 of said Act is amended to read as follows:

"SEC. 26. The President is authorized to prescribe rules and regulations for the establishment of a Foreign Service retirement and disability system to be administered under the direction of the Secretary of State and in accordance with the following principles, to wit:

"(a) The Secretary of State shall submit annually a comparative report showing all receipts and disbursements on account of refunds, allowances, and annuities, together with the total number of persons receiving annuities and the amounts paid them, and shall submit annually estimates of appropriations necessary to continue this section in full force and such appropriations are hereby authorized.

"(b) There is hereby created a special fund to be known as the Foreign Service retirement and disability fund.

"(c) Five per centum of the basic salary of all Foreign Service officers eligible to retirement shall be contributed to the Foreign Service retirement and disability

fund, and the Secretary of the Treasury is directed on the date on which this Act takes effect to cause such deductions to be made and the sums transferred on the books of the Treasury Department to the credit of the Foreign Service retirement and disability fund for the payment of annuities, refunds, and allowances: *Provided*, That all basic salaries in excess of \$10,000 per annum shall be treated as \$10,000 and any ambassador, minister, or Foreign Service officer appointed to a position in the Department of State as provided in paragraph (n) of this section, at a lower basic salary than he was receiving on the date of such appointment shall be considered for all purposes of this section as continuing to draw the higher salary and salary deductions authorized under this paragraph shall be on that basis. *And provided further*, That any Foreign Service officer may at his option and under such regulations as may be prescribed by the President, deposit additional sums in multiples of 1 per centum of his basic salary, but not to exceed 10 per centum of such basic salary, which amounts together with interest thereon at 3 per centum per annum compounded on June 30 of each year, shall, at the date of his retirement, be returned to him in a lump sum; or the officer may elect to use the accumulated amount of his additional deposits and interest to purchase an additional annuity which shall, if he so desires, carry with it a proviso that upon his death a cash benefit shall be paid in such amount as he may elect under regulations to be prescribed by the President, to a beneficiary designated in writing and filed in accordance with instructions of the Secretary of State. The amount of such cash benefit shall not exceed the accumulated amount of the officer's additional deposits with interest to the date of retirement. *Provided, however*, That in lieu of such cash benefit, the officer may direct that beginning at the time of his death his beneficiary shall be paid a life annuity of such amount as may be purchaseable with the amount of the cash benefit and such annuity shall provide for the guaranteed return of at least the amount of the cash benefit. The calculation of the amount of the additional annuity purchaseable by the retired officer under the provisions of this option shall be based upon such tables of annuity values as may from time to time be prescribed for this purpose by the Secretary of the Treasury. In case an officer shall become separated from the Service, for any reason except retirement on an annuity, the amount of any additional deposits with interest at 3 per centum per annum compounded annually, made by him under the provisions of this paragraph shall be refunded in the manner provided elsewhere in this section for the return of contributions and interest in the case of death or withdrawal from active service. Any benefits payable to an officer, or to his beneficiary, in respect to the additional deposits provided under this paragraph, shall be in addition to the benefits otherwise provided under this section.

"(d) When any Foreign Service officer has reached the age of sixty-five years and rendered at least fifteen years of service he shall be retired on an annuity computed as prescribed in paragraph (e) of this section: *Provided*, That any Foreign Service officer who has reached the age of sixty years and rendered at least thirty years of service may be retired at his own request on the annuity computed as prescribed under paragraph (e) of this section: *Provided further*, That any officer below the age of sixty years who has rendered at least thirty years of actual service, exclusive of extra service credits as provided in paragraph (k) of this section, may be retired at his own request and elect to receive either (1) a deferred annuity beginning at age sixty computed as prescribed under paragraph (e) of this section, or (2) an immediate annuity computed as prescribed under paragraph (e) of this section reduced by one-quarter per centum of such annuity for each month or major fraction thereof, between the date of his retirement and the sixtieth anniversary of his date of birth: *And provided further*, That the President may in his discretion retain any such officer on active duty for such period prior to his reaching seventy years of age as he may deem for the interests of the United States.

"(e) The annuity of a retired Foreign Service officer shall be equal to 2 per centum of his average annual basic salary for the ten years next preceding the date of retirement, multiplied by the number of years of service not exceeding thirty years: *Provided*, That at the time of his retirement a Foreign Service officer, if the husband of a wife to whom he has been married for at least five years, may elect to receive a reduced annuity and designate his wife as his beneficiary, to whom will be paid any portion up to two-thirds of his reduced annuity, at the option of the officer, as long as she may live after his death: *Provided, however*, That the annuity payable to the widow shall in no case exceed 25 per centum of the officer's average annual basic salary for the ten years next preceding the date of retirement. If the age of the officer is less than the age of the wife or exceeds her age by not more than eight years, the annuity of the officer will be reduced by



an amount equal to one-half the annuity which he elects to have paid to his widow. If the age of the officer exceeds the age of the wife by more than eight years, the annuity of the officer will be reduced by an amount equal to one-half the annuity which he elects to have paid to his widow, plus an additional reduction equal to 2 per centum of such widow's annuity for each year, or fraction thereof, that the difference in age exceeds eight. *Provided further*, That a retired officer who is receiving an annuity on the effective date of this Act, if the husband of a wife to whom he was married at the time of his retirement and for a total period of at least five years, shall be entitled under the same terms and conditions set forth above, to elect to receive a reduced annuity, a portion of which will be continued on his death throughout the life of his surviving widow, but all such elections by retired officers shall be made within six months following the effective date of this Act, and they shall all be effective on the same date, to be prescribed by the President: *And provided further*, That no increases in annuities under this Act shall operate retroactively and nothing in this Act shall be interpreted as reducing the rate of the annuity received by any retired officer on the effective date of this Act, unless the officer voluntarily elects to receive a reduced annuity as provided herein.

"(f) In case a Foreign Service officer shall die without having established a valid claim for annuity, the total amount of his deductions with interest thereon at 4 per centum per annum compounded on June 30 of each year, except as provided in paragraph (c) of this section, shall be paid upon the establishment of a valid claim therefor in the order of precedence given under paragraph (i) of this section: *Provided, however*, That if the deceased officer rendered at least fifteen years of service and is survived by a widow to whom he was married for at least five years, such widow shall be paid an annuity equal to the annuity which she would have been entitled to receive if her husband had been retired on the date of his death, under the provisions of paragraph (j) of this section, and had elected to receive the reduced joint and survivorship annuity, under paragraph (e) hereof, providing the maximum annuity for his widow, unless prior to the date of his death he shall have elected, in lieu of such widow's annuity, and with the approval of the Secretary of State, the return of his deductions with interest as provided in the first part of this paragraph covering officers dying without having established a valid claim for annuity.

"(g) The Secretary of the Treasury is directed to invest from time to time in interest-bearing securities of the United States such portions of the Foreign Service retirement and disability fund as in his judgment may not be immediately required for the payment of annuities, refunds, and allowances, and the income derived from such investments shall constitute a part of said fund.

"(h) None of the moneys mentioned in this section shall be assignable either in law or equity, or be subject to execution, levy, or attachment, garnishment, or other legal process.

"(i) In case the total contributions of the retired officer, exclusive of additional voluntary contributions made under paragraph (c) of this section, together with interest at 4 per centum per annum compounded annually up to the date at which annuity payments cease under the terms of the annuity, exceed the annuity payments exclusive of any additional annuity purchased with voluntary contributions made under paragraph (c) hereof, accumulated at the same rate of interest up to such date, the excess of said accumulated contributions over said accumulated annuity payments shall be paid in the following order of precedence, upon the establishment of a valid claim therefor:

"First, to the beneficiary or beneficiaries designated in writing by such annuitant or Foreign Service officer and recorded in compliance with instructions of the Secretary of State, which are hereby authorized;

"Second, if there be no such beneficiary, to the duly appointed executor or administrator of the estate of such annuitant or Foreign Service officer;

"Third, if there be no such beneficiary, or executor or administrator, payment may be made, after the expiration of thirty days from the date of the death of the annuitant or Foreign Service officer, to such person or persons as may appear in the judgment of the Secretary of State to be legally entitled thereto, and such payment shall be a bar to recovery by any other person.

"(j) Any Foreign Service officer who, after serving for a total period of not less than fifteen years, becomes totally disabled for useful and efficient service by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on his part, shall, upon his own application or upon order of the President, be retired on an annuity under paragraph (e) of this section: *Provided, however*, That in each case such disability shall be determined by the report of

a duly qualified physician or surgeon designated by the Secretary of State to conduct the examination: *Provided further*, That unless the disability be permanent, a like examination shall be made annually until the annuitant has reached the retirement age as defined in paragraph (d) of this section, and the payment of annuity shall cease from the date of the medical examination showing recovery.

"Fees for examinations under this provision, together with reasonable traveling and other expenses incurred in order to submit to examination, shall be paid out of the Foreign Service retirement and disability fund.

"When the annuity is discontinued under this provision before the annuitant has received a sum equal to the total amount of his contributions, with accrued interest, the difference shall be paid to him or to his legal representatives.

"(k) The President is authorized from time to time to establish, by Executive order, a list of places which by reason of climatic or other extreme conditions are to be classed as unhealthful posts, and each year of duty subsequent to January 1, 1900, at such posts inclusive of regular leaves of absence, of officers already retired or hereafter retired, shall be counted as one year and a half, and so on in like proportion in reckoning the length of service for the purpose of retirement, fractional months being considered as full months in computing such service: *Provided, however*, That the President may at any time cancel the designation of any places as unhealthful without affecting any credit which has accrued for service at such posts prior to the date of the cancellation.

"(l) Whenever a Foreign Service officer becomes separated from the Service before becoming eligible for an annuity, except under section 33 of this Act, the total amount of contributions from his salary with interest thereon at 4 per centum per annum compounded annually up to the date of such separation, except as provided in paragraph (c) of this section, shall be returned to him.

"(m) The Treasury Department shall prepare the estimates of the annual appropriations required to be made to the Foreign Service retirement and disability fund and to all other similar retirement funds providing annuity benefits to Government employees or to employees of the government of the District of Columbia, and shall make actuarial valuations of such funds at intervals of five years, or oftener if deemed necessary by the Secretary of the Treasury: *Provided, however*, That in the case of the Civil Service Retirement and Disability Fund, the Canal Zone Retirement and Disability Fund, and the Alaska Railroad Retirement and Disability Fund, the required estimates and valuations shall be made by the Treasury Department in accordance with plans and procedures approved by the Board of Actuaries provided for under the provisions of the Civil Service Retirement Act. The Secretary of State is authorized to expend from money to the credit of the Foreign Service retirement and disability fund an amount not exceeding \$5,000 per annum for the expenses necessary in carrying out the provisions of this section, including actuarial advice.

"(n) Any diplomatic secretary or consular officer who has been or any Foreign Service officer who may hereafter be promoted from the classified service to the grade of ambassador or minister, or appointed to a position in the Department of State, shall be entitled to all the benefits of this section in the same manner and under the same conditions as Foreign Service officers: *Provided*, That any officer now included under the Act of May 24, 1924, and the amendment thereto of July 3, 1926, shall be entitled to the benefits of this section.

"(o) For the purposes of this Act the period of service shall be computed from the date of original oath of office as diplomatic secretary, consul general, consul, vice consul, deputy consul, consular assistant, consular agent, commercial agent, interpreter, or student interpreter, and shall include periods of service at different times as either a diplomatic or consular officer, or while on assignment to the Department of State, or on special duty or service in another department or establishment of the Government, but all periods of separation from the service and so much of any period of leave of absence without pay as may exceed six months shall be excluded: *Provided*, That service in the Department of State or as clerk in a mission or consulate prior to appointment as a Foreign Service officer may be included in the period of service, in which case the officer shall pay into the Foreign Service retirement and disability fund a special contribution equal to 5 per centum of his annual salary for each year of such employment subsequent to July 1, 1924, with interest thereon to date of payment compounded annually at 4 per centum."

SEC. 5. Section 33 of said Act is amended to read as follows:

"SEC. 33. Notwithstanding the provisions of section 10 of this Act all Foreign Service officers having a rating of satisfactory or better who shall have been in classes 5, 6, 7, or 8 for a continuous period of nine months or more, shall, on the

first day of each fiscal year, receive an increase of salary of \$100, except that no officer shall receive a salary above the maximum of his class and all such officers in classes 1, 2, 3, or 4 shall in the same circumstances receive an increase of \$200: *Provided*, That the Secretary of State is authorized to fix the salary of Foreign Service officers in the unclassified grade within the salary range specified in section 10 of this Act; and, within the limits of appropriation therefor, to grant to Foreign Service officers in any class additional promotion in salary within the salary range established for the classes in which they are serving, based upon especially meritorious service. Increases in salary under the terms of this section shall be paid to Foreign Service officers only as the right to such increases accrues after the effective date of this Act. The President is hereby authorized to establish by Executive order, regulations providing for the separation of Foreign Service officers from the Foreign Service, in accordance with the conditions hereinafter prescribed. Any Foreign Service officer so separated from the Foreign Service shall be retired from the Service, after a hearing by the Secretary of State, upon an annuity equal to 25 per centum of his salary at the time of retirement, in the case of an officer over forty-five years of age, or in the case of an officer under forty-five years of age with a bonus of one year's salary at the time of his retirement, either annuity or one year's salary to be payable out of the Foreign Service retirement and disability fund and except as herein provided, subject to the same provisions and limitations as other annuities payable out of such fund; but no return of contributions shall be made under paragraph (1) of section 26 of this Act in the case of any Foreign Service officer retired under the provisions of this section: *Provided, however*, That any officer entitled to the bonus of one year's salary will receive in lieu of such bonus the amount of his contributions and interest under paragraph (1) of section 26 of this Act if such amount exceeds one year's salary. Whenever it is determined that the efficiency rating of an officer is unsatisfactory, thereby meaning below the standard required for the Service, and such determination has been confirmed by the Secretary of State, the officer shall be notified thereof, and if, after a reasonable period to be determined by the circumstances in each particular case, the rating of such officer continues to be found unsatisfactory and such finding is confirmed by the Secretary of State after a hearing accorded the officer, such officer shall be separated from the Service with the annuity or bonus provided in this section, but no officer so separated from the Service shall receive the said annuity or bonus unless at the time of separation he shall have served at least fifteen years. He shall, however, if he has not served at least fifteen years, have returned to him the full sum of his contributions to the annuity fund, with interest thereon at 4 per centum compounded annually, except as provided in paragraph (c) of section 4 of this Act. The benefits of this section, except, at the option of the Secretary of State, the return of an officer's contributions to the annuity fund, shall not be given to Foreign Service officers separated from the Foreign Service on account of malfeasance in office."

